

ATTORNEY DOCKET NO.: S0351/249009

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Gibson et al.

#4

SERIAL NO.: 09/699,002 GROUP ART UNIT: 1616

AKD

FILED: October 26, 2000 EXAMINER: Badio

2-22-02

FOR: HIGH VISCOSITY LIQUID CONTROLLED DELIVERY SYSTEM AND  
MEDICAL OR SURGICAL DEVICEAssistant Commissioner for  
Patents  
Washington, D.C. 20231I hereby certify that this correspondence is being transmitted by  
facsimile on the date shown below to the Patent and Trademark  
Office at (703-872-9306 on January 30, 2002RESPONSE TO ELECTION REQUIREMENT  
AND PETITION FOR EXTENSION OF TIME

Sir:

The Examiner issued a requirement for restriction dated July 30, 2001,

02/25/2002 HDENDY 0000001-110455-A9245107  
01 FC:128 1960.00 CH requiring restriction between the following inventions:

- I. Claim 88 (in part) drawn to compounds of formula II;
- II. Claim 88 (in part) drawn to compounds of formula III;
- III. Claim 88 (in part) drawn to compounds of formula IV;
- IV. Claim 88 (in part) drawn to compounds of formula V;
- V. Claim 88 (in part) drawn to compounds of formulae VI and VII;
- VI. Claim 88 (in part) drawn to compounds of formula VIII.

U.S.S.N. 09/699,002  
Filed: October 26, 2000  
RESPONSE TO ELECTION REQUIREMENT AND  
PETITION FOR EXTENSION OF TIME

The Examiner states that the inventions are distinct because they are drawn to different structural compounds, and that restriction is proper because the search for one group is not required for the others.

The Examiner further requires Applicants to elect a single disclosed species from the elected group.

Applicants elect the invention of Group III, with traverse. Applicants further elect the species of compound of formula IV wherein R1, R2, R3, and R5 are acetate and R4 is lactate, with traverse.

Applicants respectfully traverse the requirement for restriction to the extent that the Examiner is restricting within a single claim, and appears to intend to withdraw nonelected "groups" from consideration, and has not indicated that she is following the procedure set forth in MPEP 803.02. It is improper for the Examiner to withdraw a portion of the claim from consideration, since this is tantamount to a rejection under 35 U.S.C. § 121. *See In re Weber*, 198 USPQ 328 (CCPA 1978); *In re Haas*, 198 USPQ 334 (CCPA 1978). Applicants respectfully submit that the Examiner should follow the procedure described in MPEP 803.02 with respect to the nonelected groups above.

Pursuant to 37 C.F.R. 1.136(a), Applicants herewith petition that the period for response to the Office Action mailed on July 30, 2001, in connection with the above-identified application be extended for five months, to and including January 30, 2002. Our check in the amount of \$1960.00 to cover the fee under 37 C.F.R. 1.17 is enclosed.

U.S.S.N. 09/699,002  
Filed: October 26, 2000  
RESPONSE TO ELECTION REQUIREMENT AND  
PETITION FOR EXTENSION OF TIME

The Commissioner is authorized to charge any additional fees that may be due  
or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,



Bruce D. Gray  
Reg. No. 35,799

Date: January 30, 2002  
KILPATRICK STOCKTON LLP  
Suite 2800, 1100 Peachtree Street  
Atlanta, Georgia 30309-4530  
(404) 815-6218

The "Received" stamp of the Patent Office imprinted hereon will acknowledge receipt of:

Applicant: Gibson et al.  
Application No. 09/385,107  
Filing Date October 26, 2000 S0351/249009

**PAPERS SUBMITTED:**

1. Response to Election Requirement and Petition for Extension of Time w/certificate of mailing under 37 CFR 1.8(a)  
2. check in the amount of \$1960 for five month EOT

---

---

---

---

By: Bruce D. Gray, Reg. No. 35,799  
Date: January 29, 2002

KILPATRICK STOCKTON LLP

WACHOVIA ACCOUNT NO: 13 159 238

DATE: 01-29-02	PAYEE: Commissioner for Patents	VENDOR # 24959	CHECK #: 288880	
REF.#:	G/L #	INVOICE #	DESCRIPTION	AMT.PAID
456135	20999 00000000	0129020	249009 USN 09/385.107 Extension of Time	1,960.00
TOTAL				1,960.00

KILPATRICK STOCKTON LLP  
 OPERATING ACCOUNT  
 1100 Peachtree Street  
 Atlanta, Georgia 30309-4530

DATE  
01-29-02

WACHOVIA  
 Wachovia Bank of Georgia, N.A.  
 Atlanta, GA 30383

NO. 288880

64-1  
610

\$\*\*\*\*\*1,960.00

VOID AFTER 180 DAYS  
TWO SIGNATURES REQUIRED OVER \$2,000

PAY: ONE THOUSAND NINE HUNDRED-SIXTY AND 00/100 Dollars

TO  
 THE  
 ORDER  
 OF  
 Commissioner for Patents

\*\* 288880\*\* 0610000101 13 159 238 \*\*